
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Action Radio, LLC)	File Number: EB-07-PO-083
)	
Licensee of Stations KZZR(AM) and KQHC-FM)	NAL/Acct. No.: 200732920005
Burns, Oregon)	FRN: 0013304258
Facility ID Numbers 62265 and 62264)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: August 14, 2007

By the Resident Agent, Portland Resident Agent Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Action Radio, LLC ("Action Radio"), licensee of broadcast stations KZZR(AM) and KQHC-FM, in Burns, Oregon, apparently willfully and repeatedly violated Section 11.35(a) of the Commission's Rules ("Rules")¹ by failing to ensure the operational readiness of the KZZR(AM) and KQHC-FM Emergency Alert System ("EAS") equipment. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Action Radio is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000).

II. BACKGROUND

2. On July 26, 2007, in response to a complaint, an agent of the Enforcement Bureau's Portland Resident Agent Office inspected the EAS equipment installed at KZZR(AM) and KQHC-FM's studio in Burns, Oregon. The inspection revealed that the KZZR(AM) and KQHC-FM EAS encoder/decoder, model Sage, was not operational and that the date stamp was reset to a default year of 1995. The agent reviewed the KZZR(AM) and KQHC-FM EAS logs and observed that the last EAS entry was a Required Weekly Test transmitted on July 24, 2006. In response to questions from the Portland agent, the Action Radio general manager and assistant general manager acknowledged that KZZR(AM) and KQHC-FM had not conducted any EAS Tests or alerts for "over a year" because of the non-operational EAS equipment.

III. DISCUSSION

3. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been

¹ 47 C.F.R. § 11.35(a).

² 47 U.S.C. § 503(b).

interpreted to mean simply that the acts or omissions are committed knowingly.³ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁴

4. The Rules provide that every AM and FM broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to not participate.⁵ The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general public.⁶ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.⁷ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station

5. Section 11.35 of the Rules requires all broadcast stations to ensure that EAS encoders, EAS decoders and Attention Signal generating and receiving equipment is installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation. Broadcast stations must also determine the cause of any failure to receive required monthly and weekly EAS tests, and must indicate in the station’s log why any required tests were not received and when defective equipment is removed and restored to service.⁸

6. Section 11.52(d) of the Rules requires broadcast stations to monitor at least two EAS sources.⁹ The monitoring assignments of each broadcast station are specified in the State EAS Plan and FCC Mapbook. The requirement that stations monitor at least two EAS sources ensures redundancy of the EAS system in the event one of the sources fails.

7. Section 11.61(a)(1) and (2) of the Rules requires broadcast stations to (a) receive monthly EAS tests from designated local primary EAS sources and retransmit the monthly test within 60 minutes of its receipt and (b) conduct tests of the EAS header and EOM codes at least once a week at random days and times.¹⁰ The requirement that stations monitor, receive and retransmit the required EAS tests ensures the operational integrity of the EAS system in the event of an actual disaster. Appropriate entries must be made in the broadcast station log as specified in Sections 73.1820 and 73.1840, indicating reasons why

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

⁵ 47 C.F.R. §§ 11.11 and 11.41.

⁶ 47 C.F.R. §§ 11.1 and 11.21.

⁷ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

⁸ 47 C.F.R. § 11.35(a) and (b).

⁹ 47 C.F.R. § 11.52(d).

¹⁰ 47 C.F.R. § 11.61. The required monthly and weekly tests are required to conform to the procedures in the EAS Operational Handbook. *See also, Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, 17 FCC Rcd 4055 (2002) (effective May 16, 2002, the required monthly EAS test must be retransmitted within 60 minutes of receipt).

any tests were not received or transmitted.¹¹

8. On July 26, 2007, the inspection and investigation by the Portland agent revealed that the EAS equipment for KZZR(AM) and KQHC-FM was not operational because it was not capable of receiving tests and alerts from the EAS Local Primary stations and, based on statements by Action Radio personnel, this failed condition had persisted for over a year. Additionally, Action Radio failed to document in the EAS logs the functionality of the EAS equipment. Action Radio personnel were aware of this non-operational EAS equipment, but did not act to correct it until the stations were inspected by the Portland agent. Therefore, we find that Action Radio's violation was willful. Action Radio's violation occurred on more than one day; therefore, the violation was repeated. Based on the evidence before us, we find that Action Radio willfully and repeatedly violated Section 11.35(a) of the Rules by failing to ensure the operational readiness of the EAS equipment at KZZR(AM) and KQHC-FM.

9. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("*Forfeiture Policy Statement*"), and Section 1.80 of the Rules, the base forfeiture amount for EAS equipment not operational is \$8,000.¹² In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹³ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Action Radio is apparently liable for an \$8,000 forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Action Radio, LLC, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violations of Section 11.35(a) of the Rules.¹⁴

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Action Radio, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

13. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Portland Resident Agent Office, P.O. Box 61469, Vancouver, Washington 98666-1469, and must include the NAL/Acct. No. referenced in the caption.

¹¹ 47 C.F.R. §§ 73.1820 and 73.1840.

¹² 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 11.35(a).

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.¹⁵

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Action Radio, LLC.

FEDERAL COMMUNICATIONS COMMISSION

Binh Nguyen
Resident Agent
Portland Resident Agent Office
Western Region
Enforcement Bureau

¹⁵ See 47 C.F.R. § 1.1914.